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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 STONEX GROUP, INC.,

4 Plaintiff,

5 v.

23 Civ. 613 (JGK)

6 HOWARD SHIPMAN,

7 Defendant.

Conference (Remote)

8 February 13, 2023
9 12:01 p.m.

10 Before:

11 HON. JOHN G. KOELTL,

District Judge

12 APPEARANCES

13 PROSKAUER ROSE LLP

14 Attorneys for Plaintiff

15 BY: LLOYD B. CHIN, ESQ.

DARYL LEON, ESQ.

16 PETERS HAMLIN LAW LLC

17 Attorneys for Defendant

BY: KRISTAN PETERS-HAMLIN, ESQ.

18 ALSO PRESENT: CRAIG HYMOWITZ, General Counsel, StoneX Group
19 HOWARD SHIPMAN, Defendant
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(Case called)

THE COURT: Who's on the line for the plaintiff?

MR. CHIN: Good morning, your Honor. Well, good afternoon, I guess, now. Lloyd Chin and Daryl Leon from Proskauer for the plaintiffs. We're also joined by Craig Hymowitz, in-house counsel, with plaintiff.

THE COURT: And who's on the line for the defendant?

MS. PETERS-HAMLIN: Kristan Peters-Hamlin on behalf of Mr. Shipman, and Mr. Shipman is also on the line, your Honor. Good morning. Or good afternoon.

THE COURT: Good afternoon.

All right. I just received a declaration by the defendant, Mr. Shipman, in connection with the plaintiff's motion to compel. I also received an *ex parte* submission by the defendant asking me to file the *ex parte* submission under seal.

My practice is, first of all, if I get an *ex parte* submission, I indicate on the record that there is an *ex parte* submission.

Second, there are limits to what can be filed under seal. Portions of the submission plainly don't warrant filing under seal; portions do. The portions that don't require filing under seal, I can explain now, and the portions that do warrant filing under seal, I won't detail what they are, but having disclosed what can be disclosed, I'll simply file the

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1 *ex parte* submission under seal.

2 What does not warrant filing under seal? The fact
3 that the defendant no longer wishes to be represented by his
4 counsel and the counsel will be filing an application to
5 withdraw, with the consent of the defendant, after this
6 conference. And the defendant will then be *pro se*. The
7 reasons for that are traditionally subject to filing under seal
8 and so I'll respect that at this point, and having disclosed
9 what can reasonably be disclosed, I'll place the *ex parte*
10 submission under seal.

11 Because the defendant will be *pro se*, I will also
12 enter an order which explains to the defendant that he can
13 consult the New York Legal Assistance Group, which provides
14 assistance to *pro se* litigants in the court, and I'll provide
15 to the defendant the details of the New York Legal Assistance
16 Group. Whether they can assist the defendant in this case, I
17 don't know, but that's up to the defendant. He can consult
18 with the New York Legal Assistance Group.

19 The submission was that the defendant wishes
20 henceforth to proceed *pro se*. And of course a defendant has
21 the right to proceed *pro se*. Is it your intention, desire to
22 proceed *pro se* from here on, Mr. Shipman, rather than to get
23 another lawyer?

24 MS. PETERS-HAMLIN: Your Honor, before you move on, I
25 don't think anywhere in his declaration does he say that he

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1 wishes to no longer be represented by me. He did not say that.
2 He said that he exhausted his funds and so he consents to my
3 withdrawal. So if there were an order saying he indicated he
4 wishes that I'm no longer his counsel, that would be
5 inconsistent with what his declaration actually says. As he
6 made very clear, he was very happy with my representation.

7 THE COURT: Oh, yes, that's right. I mean, do you
8 want me to put the whole declaration in the record not under
9 seal?

10 MS. PETERS-HAMLIN: I have no objection to it being
11 put as is on the entire record. Mr. Shipman is on the phone.
12 If he has an objection to the declaration being put not under
13 seal, he can speak now. But I don't have an objection to the
14 entirety of the declaration being on the record without being
15 under seal.

16 THE COURT: Mr. Shipman?

17 MR. SHIPMAN: I have no objection, your Honor.

18 THE COURT: Okay. All right. That's fine. That's
19 fine. The lack of funds is a traditional reason for putting
20 something under seal. But so be it.

21 Mr. Shipman, is it your desire to proceed pro se
22 rather than to look for another counsel?

23 MR. SHIPMAN: Your Honor, I will look for another
24 counsel, but in lieu of [sic] lack of funds, I don't know if
25 it's reasonable to expect that I'll find one to work within my

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1 means. I know no other way to proceed than pro se.

2 THE COURT: Okay. You're welcome to look for other
3 counsel; you're welcome to consult with the Legal Assistance
4 Group. They also have contacts with other private lawyers.
5 Whether this is a case that would, you know, indicate that
6 there is other representation out there is something which I
7 don't know.

8 There is always an issue as to whether there should be
9 any stay while a party attempts to find other counsel. In this
10 case, there's a need for some expedition because there is an
11 ongoing expedited discovery in connection with a motion for a
12 preliminary injunction. And so there is a need for some
13 expedition. And the defendant doesn't foresee getting another
14 lawyer. If things change, an application could be made to me
15 with respect to any stay, but at this point it doesn't look
16 like there should be a stay. But I'm always open to any
17 applications that are made before me.

18 So the indication is that the application to withdraw
19 as counsel would be made after this hearing. So, fine. So I
20 got the plaintiff's submission and I got the defendant's
21 response today.

22 I also issued an order on February 10, in response to
23 the plaintiff's application. Having read what the defendant
24 has now submitted, it's not clear to me that there is a dispute
25 about anything at the moment. The initial application appeared

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1 to say that the production of computers, devices, accounts in
2 the defendant's possession or control was being limited by the
3 defendant to those computers, devices, or accounts that the
4 defendant recalls contained information from the plaintiff.
5 The defendant, in the defendant's submission, says no, no, that
6 provision in paragraph 4 of the original order is not being
7 disputed, Charles River can come to the defendant's house and
8 inspect any such devices, if you will. There was some dispute
9 with respect to accounts, such as a Brooks Brothers account,
10 but not with respect to any of the physical devices. The
11 parties were going to work out a protocol, which I have no idea
12 where that stands. And it was contemplated that the defendants
13 could be required to produce an inventory of computers,
14 devices, and accounts, although that wasn't specifically
15 included in the original order. But this is discovery, and I
16 would have expected that the parties would work out the details
17 of the discovery without the kind of apparent acrimony that
18 developed. "Accounts" was plainly not intended to cover a
19 Brooks Brothers account.

20 And the last paragraph of my February 10 order said
21 that the defendant should take any necessary steps to ensure
22 that evidence is not destroyed by third parties. And I said
23 the defendant should promptly reactivate his Linode server and
24 any other accounts that he's canceled to ensure preservation of
25 evidence. That was plainly meant to avoid the situation where

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1 there is an automatic destruction of accounts after a certain
2 period of time; so that if there is a Linode server out there
3 which automatically deletes matter after some period of time
4 after the account with Linode is stopped, that Linode doesn't
5 do that with respect to any information that is relevant to
6 this case. Now again, I would have expected that these are the
7 kinds of issues that get resolved between the parties.
8 Correspondence back and forth suggests that may not be the
9 case, and so my next step may well be to assign the case to a
10 magistrate judge for general pretrial to minutely manage the
11 discovery, which should be fairly straightforward.

12 So now I'll listen to the parties. This was
13 originally an application by the plaintiff, and having read the
14 application, I waited for some period of time to see if there
15 was a response from the defendant. When I didn't get that, I
16 issued the order that I issued and then I got the defendant's
17 response today.

18 So what would the plaintiff like to tell me?

19 MR. CHIN: Well, your Honor, I think the February 10
20 order largely resolved our concerns. I do — at least with
21 respect to this particular issue — that is, you know, our
22 concern that the position being taken by the defendant was that
23 he was going to self-select which devices would be made
24 available for discussion, which was contrary to paragraph 4 of
25 the January 26, 2023, order, and I think the Court has agreed

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1 with us on that point.

2 Now we received this filing a few minutes before the
3 conference today in which there's an assertion that, well,
4 there was no need to make that request, that this was all fine
5 and good and there was no problem here; and if that's true,
6 then fine. But I would only suggest that if the Court's
7 concerned that we, the plaintiffs here, filed an application
8 without any need for doing so, I would suggest to the Court
9 that Exhibit B to the declaration that was filed at about 11:30
10 today — Exhibit B is a string of emails, which you don't need
11 to read in their entirety, but if you just start on page 1,
12 there's a statement: Your interpretation of that order is
13 simply overbroad and wrong. So, I mean, I don't think there's
14 a resolution there. And if you go further into the — I don't
15 know the number, but page 6 of the pdf — and if you read the
16 first three paragraphs at the top of page 6 of that pdf, it's
17 clear that the position being taken by the defendant was that,
18 we're not going to give you every device, we're going to give
19 you those devices that either now or at one time had StoneX
20 matter on them, and I think there's no question that that was
21 the position being taken. Now it's true that —

22 THE COURT: Could — go ahead.

23 MR. CHIN: Sorry. Please go ahead, your Honor.

24 THE COURT: What page of the attachment are you
25 referring to?

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1 MR. CHIN: This is Exhibit B, page 6.

2 THE COURT: My pages aren't numbered, so just tell
3 me —

4 MR. CHIN: Oh, it's a Word document. My apologies.
5 They're not numbered, but if you just page through to a page
6 that starts at the top, "You claimed in the call."

7 THE COURT: Okay. Hold on.

8 "You claimed in the call."

9 MR. CHIN: All right. So "You claimed in the call,"
10 and this is following up on a --

11 MS. PETERS-HAMLIN: I'm going to have to interrupt
12 too. So I'm looking at Exhibit B and it looks like it's only
13 four pages long. So you said page 6?

14 MR. CHIN: That's the way it printed out for us. It's
15 the paragraph beginning "You claimed in the call."

16 MS. PETERS-HAMLIN: Okay. So if you go on it
17 electronically, because I sent it to you electronically, it's
18 four pages, and I don't see any page that begins with "You
19 claimed." So how you printed it is hard for us to follow. If
20 you could just indicate where it is electronically.

21 THE COURT: I have it. It is the final email and it's
22 in the paragraph that begins bolded, **Devices**. Then we turn to
23 the subject of devices.

24 MS. PETERS-HAMLIN: Thank you, your Honor. I see it
25 now.

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1 THE COURT: And so I'm being pointed to the paragraph
2 that says "You claimed."

3 MS. PETERS-HAMLIN: I see it now, your Honor. Thank
4 you.

5 THE COURT: Sure.

6 MR. CHIN: And so now I understand there is some
7 back-and-forth here in terms of talking — we're asking to be
8 advised in advance of the inspection what the devices are so
9 that our consultant will know what equipment to bring. But
10 bound up in that discussion is also what is going to be made —
11 what devices, systems, and accounts are going to be made
12 available for inspection. And the statement that's being made
13 by defense counsel here, "You claimed in the call he needs to
14 identify an account for every device in his home. I made clear
15 to you that paragraph 3 does not require that, nor should it."
16 So again, defense counsel was conflating the obligation to
17 ultimately rid Mr. Shipman of any copies of our material,
18 conflating that obligation in paragraph 3 of the January 26,
19 '23, order with paragraph 4 that's not limited in that fashion.
20 I mean, it's not limited to those devices that have those
21 things. It's all devices in his possession, custody, or
22 control.

23 So we go on here. She says, "'Devices' is a broad
24 term and it includes a blender." We're not seeking blenders
25 that don't have — that don't store data. I mean —

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1 THE COURT: Could I stop you. Okay. Okay. Okay.

2 MS. PETERS-HAMLIN: Can I respond to that, your Honor?

3 THE COURT: No. Not at the moment.

4 MR. CHIN: If I could just — In conclusion, your
5 Honor, we could not get a straight answer here, and if you — I
6 mean, the paragraph that begins, "I told you that CRA could
7 feel free to verify that when they are in his home performing
8 the examination by examining his iPad. You asked whether he
9 has any phones in the house; I informed you he does but that
10 none of them have StoneX's proprietary, confidential, and trade
11 secret information on them and that's why they were not listed
12 in the paragraph 3 accounting that he provided with this
13 declaration, and they are therefore not relevant to the
14 examination described in paragraph 4." So your Honor, that's
15 precisely the concern that we had is that they — it was made
16 clear to us by defense counsel that there were other devices
17 out there that they were, based on their own self-selection,
18 determining would not be made available for our inspection, and
19 that's what prompted our application to the Court, and the
20 Court has now addressed that in his February 10th order, and
21 now we have an affidavit saying, well, I'm fine making all of
22 my — all the devices in my possession, custody, or control,
23 presuming — presumably that would be in his household or
24 anywhere else he has possession, custody, or control, that he's
25 going to make them available. You know, whether they are —

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1 belong to his wife, his children, but they're in his
2 possession, custody, or control, I think we should have those.

3 There's a separate issue relating to the Linode
4 server, which we can come back to, but that's the essence of
5 our application. And that's why we made it, your Honor, is
6 that we felt like they were — based on the language that you
7 see here and other statements that were made to us orally, we
8 felt that there was some self-editing, self-selection going on
9 here when we were entitled to have everything in his control
10 inspected — every device, every system. We're not looking for
11 a Brooks Brothers account. We're talking about, you know,
12 accounts like an email account, an account that would store
13 information or data, that belongs — potentially belong to us.

14 THE COURT: Okay. So I was going to stop you a little
15 earlier, but I'm perfectly prepared to say that the parties on
16 both sides in good faith had a misunderstanding about what was
17 being agreed to, and in part, it arose from a lack of
18 cooperation, if you will, and the unavoidable ambiguity from
19 time to time of obligations, so there is the mixing of the
20 obligations of paragraph 3 with respect to accounts with the
21 obligations of paragraph 4 that relates to the requirement for
22 the defendant to permit CRA access to any computer, device, or
23 account in the defendant's possession or control. In the
24 course of interpreting obligations, any ambiguities are usually
25 worked out in constructive meet-and-confers. And so the

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1 plaintiff says the defendant wasn't agreeing, the defendant
2 says, no, no, read all of the correspondence, all of the
3 emails, and we were agreeing to the provisions of paragraph 4.
4 Well, what are devices? So the defendant says, if you read
5 devices as broadly as the plaintiff would say, it would include
6 blenders. Not really. Food processors, old cameras, or movie
7 projectors. Not really. Does it include accounts? Well, it
8 says accounts. Well, how is that to be interpreted? So the
9 parties would normally discuss that. But those are things that
10 usually get worked out. And so they weren't worked out. And
11 so I got the application by the defendant and I issued an order
12 which said essentially that, yes, the defendant had the
13 obligation to comply with the January 26th order. Did I say
14 that devices included blenders and cameras? No. Did I say
15 that it included all accounts? Well, there are provisions that
16 specifically applied to accounts, but the parties really have
17 to work that out. And this usually gets done without the Court
18 having to intervene.

19 So at this point the plaintiff says, Judge, there were
20 statements in that email correspondence that we took one way
21 and so we came to you; we're perfectly satisfied with the most
22 recent order that you issued. And the defendant seemed to be
23 satisfied. In the defendant's current submission, the
24 defendant says, the plaintiffs really came to you without
25 justification because we were not attempting in any way to

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1 circumvent the January 26th order.

2 And so now, Ms. Peters-Hamlin, you can tell me
3 anything that you want.

4 MS. PETERS-HAMLIN: Thank you, your Honor.

5 First, as your Honor noted a week or so ago when you
6 were addressing the issue of timing of discovery, I had brought
7 to opposing counsel's attention that I have a trial on
8 February 23rd, and your Honor mentioned that usually
9 professional courtesy would require that people be a little bit
10 flexible on discovery and not require somebody who's imminently
11 going to trial to jump through hoops and finish discovery by
12 March 1st. And I thank you for that consideration. And we
13 then set the date for April 1st. Unfortunately, opposing
14 counsel has not taken your Honor's insights about professional
15 courtesy and giving someone who's about to go to trial a little
16 bit of time, and instead required accountings that would be
17 more consistent with deposition or other kind of discovery to
18 be turned around within 24 hours and then was rather terse when
19 my client and I took a little bit more time or didn't agree
20 with what we thought was their overbroad requirement of an
21 accounting that went beyond paragraph 3 and conflated both
22 paragraphs. I agree with your Honor that devices, which is
23 something — devices and accounts, which is something that the
24 defense left — sorry — the plaintiff left — StoneX left
25 completely undefined and then asked my client to swear that he

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1 had revealed every single device and account that he has —
2 that's what they provided to him to swear to. And that would
3 have been very difficult for him to go through and think of
4 every device and account without some definition. And your
5 Honor is right. I mean, it can include devices, can include
6 blenders, etc. So that's why it was incumbent upon the
7 plaintiff StoneX to state what kind of device that they were
8 looking for, because they wanted him to swear to something that
9 he couldn't swear to, because he couldn't go through every
10 device and account.

11 So we did have a meet-and-confer after I brought to
12 your attention that there are terms that were not defined and
13 they were asking for him to mention and swear to something he
14 couldn't swear to realistically, and in that meet-and-confer
15 they said, well, we don't want him to, you know — what are the
16 computers he's used? And I said there's only been two
17 computers. You're not happy with that answer, but there have
18 only been two computers he's used in the last two years. And I
19 said, we don't believe that you're only supposed to look at the
20 computers that he tells you and represents to you that he's
21 used that don't have confidential information on it. We're
22 giving you the only computers that he's used in the last two
23 years and you can look at it. And they said, okay, what about
24 USB drives? And I said, we've identified those for you and you
25 can look at those. Then they said, what about an iPad? Does

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1 he have an iPad? And I said, yes, he does, and the iPad, I've
2 asked him about that, it only has movies and games on it, but
3 you're welcome to look at it if you want. If you want to
4 inspect it, you're welcome to look at it. And that of course
5 is in the correspondence that they pointedly failed to produce
6 to the Court, which I think lacks candor because we did say,
7 you can look at the iPad. It doesn't have anything on it, he
8 never used it for StoneX work, but if you want to see the
9 movies that he's downloaded, that's fine. You can look at it.
10 And then they asked about accounts. And I said the only — you
11 know, does he have an email account? And I said yes, he
12 absolutely does. In fact, we brought this up to the Court's
13 attention. He has a Yahoo account, and that's why we told the
14 Court that we're going to need some privileged information and
15 confidential information not to be looked at, and the Court
16 said provide us with those protocols, and we provided our
17 version of those protocols to opposing counsel, and identified
18 the various confidential communications — medical; priest; you
19 know, communications with his wife, which are covered by the,
20 you know, spousal privilege; communications with me; and with
21 other counsel. And also said there's really no reason for you
22 to look at anything that preceded when he started with StoneX.
23 So we've given that to them and we disclosed the account. We
24 also disclosed that he had a Linode account, and we told them
25 that he decommissioned the server and there's really no way to

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1 reverse that, and he did it before he knew that there was any
2 lawsuit. The only reason he ever used Linode and incurred that
3 \$120 a month was to create a stable connection for his work at
4 StoneX. There was no reason for him to keep it after that. He
5 had no reason to believe that they were bringing any claims
6 that he had done anything wrong. They had terminated him
7 because of cultural differences and said that he was going to
8 be allowed to resign. So now he has four or five kids, two of
9 whom are in college, and one who's had serious medical
10 procedures in the recent past that are very confidential, and
11 those are very expensive things that have gone on in his life.
12 So when he was looking to — that he was terminated and was
13 basically getting cheated out of his bonus, he said, okay, I
14 have to cut back expenses, and that expense was only for the
15 purpose of doing his work at StoneX so he decommissioned the
16 server. The account is free when there's no server connected
17 to it. We've told him that. He also said in his declaration,
18 there's no way to reactivate the server to bring up all the
19 information. You can try to do the reconfiguration again, but
20 really the better approach is to go to Linode. So we
21 encouraged them to go to Linode. And they've also gone to the
22 mother company, which is Charter, and they've subpoenaed all of
23 the relevant information, so that's all been preserved,
24 presumably the moment that Linode got that subpoena, which we
25 did not oppose in any way and which is in fact returnable

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1 today. I would assume that everything that could have
2 potentially been destroyed by them, 'cause he can't, at this
3 juncture, reactivate that server, to be preserved by them. So
4 in their application to you, they said, you know, they're not
5 revealing to us what computers — all the computers he used.
6 Yes, we have. They just don't believe him. And he's swearing
7 that those are all the computers that he's used in the last two
8 years. They asked me does he have an iPad. Yes, he does, and
9 we're willing to let you look at it. They asked us what
10 accounts he has. And he told them. He told them he had a
11 Linode account but decommissioned the server. He told them
12 that he had an email account, Yahoo.

13 So those are the relevant things that you — those are
14 the relevant questions, not like what devices do you have in
15 the house? I mean, that's overbroad, and that's their — the
16 burden was on them for being precise to what they wanted him to
17 swear to. What he said was, he revealed to them through me
18 that he does have a Yahoo account, that that's something that
19 we had mentioned to the Court before, that we wanted, you know,
20 some protocols regarding privilege to be addressed. It has
21 revealed everything that they know. Then they asked me, does
22 he have phones. Okay. He has landline phones. That's
23 irrelevant. And he asked me, does he have an iPhone? Yes, he
24 does. But the reason an iPhone is not relevant is you can't
25 download documents to it. And with respect to emails, all of

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1 the emails that would be on his home — sorry — all of the
2 emails that would be on his work laptop computer and the two
3 laptops that they're examining, I guess he might also have them
4 on his phone but it doesn't make a difference because it's
5 redundant, right? And with respect to cameras that are on his
6 phone, it seems to me that since a phone cannot, you know —
7 doesn't have a Word doc function or a pdf function where you
8 can actually download items to it and it's completely redundant
9 for what they have, asking him to reveal family photos of his,
10 you know, daughter before and after she became trans or of his
11 wife, I mean, it's just completely inappropriate and over the
12 top. And they haven't articulated a justification for that.
13 And they also think — and he said that or hinted at it in this
14 call — that if his adult children that are, you know, in
15 college also have as their residence his home, that they should
16 be able to get access to their computers. And that's
17 outrageous. That's an outrageous infringement on their
18 privacy. And it's also an impingement on the privacy to ask to
19 look at his children and his wife's computers. They have
20 nothing to do with this case. And if he's willing to swear
21 under oath that he's never used their computers at all in the
22 last two years, it seems to me that in balancing the interests
23 of third parties that have absolutely nothing to do with this
24 case and impinging on their privacy rights, that would be fair.
25 They also asked for access to anybody who has used the router.

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1 Well, I know when I've been on, you know, the local legislature
2 — which we call in Connecticut RCM — had people working on
3 legislation with me and they all hooked up to the router and
4 they all did work at the same time. He said he had friends
5 over one time for a work group, one of his children — sorry —
6 one of his children had friends over and there were 30 people
7 accessing the router. This is overbroad. This is — he's
8 given them what is completely consistent with the Court's
9 order. I understand your Honor's point that -- they filed
10 their motion after business hours at about 7:30 or 8:00 at
11 night on the 7th. So your Honor waited two days for me to
12 reply, but there was nothing before you which is your order and
13 I never got an opportunity to reply and indicate that the Court
14 — that they had failed to disclose the email correspondence
15 over the last three days that would put the lie to what they
16 were claiming to the Court. And I didn't get an order from the
17 Court saying please respond by such and so date, and since only
18 two days had passed and usually under the rules, you have a
19 certain amount of time, you know, to respond to motions. I
20 think it's ten days. I didn't know that after two days without
21 a court order saying, you must respond by XYZ date, that the
22 Court was going to issue an order just based on what they said.
23 And that's — my apologies for that. I didn't know your Honor
24 was going to rule. I believe that your Honor has — that
25 order, I would respectfully request that it be reconsidered

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1 because there might be aspects of it that once you have an
2 opportunity to review the correspondence between counsel on
3 February 3rd and February 6th, you'll come to a different
4 conclusion about the accuracy of what was represented by
5 opposing counsel. And I also think that based on this
6 declaration and the opposition that's been filed, you will see
7 that it — the last part of the Court's order, where it says
8 the defendant should promptly reactivate his Linode server,
9 which would mean he would have to incur \$125 a month again, and
10 the other accounts that he's canceled, but the Linode server,
11 he has the account because it's free when you don't have a
12 Linode server, he can't reactivate the old server, so I think
13 that should be — I think you should look at — I would
14 respectfully request that you look at his declaration, and he
15 says he doesn't believe that what was on his server before, he
16 has access to and that the better approach is for them to
17 subpoena Linode and its mother company Charter to get at the
18 hard drive regarding that. He doesn't have access to that. So
19 that request — or that order, rather, that he incur the cost
20 of reactivating his Linode server, I think in light of what he
21 said in his declaration is something that I would respectfully
22 request that the Court reconsider. Again, I didn't know the
23 Court was going to issue an order without letting me know that
24 I have till X, Y, Z date to respond. I assume that the regular
25 rules regarding response time for motions would be permissible,

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1 and that was my error. I apologize for that. But I would hope
2 that the Court will review his declaration and the emails and
3 then reconsider the Court's order that it issued on
4 February 10th.

5 And then secondly, I believe that their request to
6 look at his children's computers and his wife's computers and
7 the router is really just a gross infringement on their privacy
8 rights. I have not seen a court order, something like that. I
9 haven't seen any precedence cited by them that that's an
10 appropriate thing to order the Court to do. I did tell them
11 that I thought they could take his deposition and ask him those
12 questions and issue discovery requests consistent with the
13 actual deadlines that the Court has ordered in this case, which
14 is that discovery would go to April 1st, instead of asking him
15 to turn around a declaration without any kind of proper
16 discovery requests consistent with the Federal Rules of Civil
17 Procedure, and ask him to identify every device and every
18 account that there is, even though it's not reasonably
19 calculated to lead to admissible evidence for him to have to
20 identify every account and every device. He has identified
21 that he has an iPhone, that he has an iPad, that he has two
22 computers that he used; he also said and has returned already
23 the laptop computer that he used when he was at StoneX. He
24 also has identified that he had a Linode server and
25 decommissioned it on the 14th.

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1 So I believe that he's met all of his obligations in
2 terms of paragraph 3, and I also believe that he's given them
3 all the information they need to do an examination, a prompt
4 examination. We were available for them to do the examination
5 a week ago. They got all the information they need regarding
6 the relevant devices that they can look at. We simply do not
7 agree and strongly oppose them looking at his children's
8 devices, his wife's devices, asking for, you know, any devices
9 that ever attached to the router during the last two years.
10 He's willing to swear that he — under oath, subject to the
11 penalty of perjury — that he has never used any of other
12 people's, third party's devices to — or computers to do StoneX
13 work, to access StoneX information, your Honor. I think that
14 subject-to-perjury assertion should be enough. And from the
15 cost/benefit perspective, in weighing impingement of privacy
16 rights versus what we actually have as proof in this case, the
17 Court should say — issue an order saying that the children's
18 computers, the wife's computers, the — any computers ever
19 connected to the router are outside the purview of this round
20 of discovery, unless they can meet some sort of a showing that
21 it's appropriate. And they have not met that showing, provided
22 that showing to date.

23 Thank you, your Honor.

24 THE COURT: Mr. Chin?

25 MR. CHIN: Well, your Honor, first, I would just like

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1 to note that we filed our letter with the Court on
2 February 7th, and, you know, we made it clear our understanding
3 of the defendant's position. And I've referred you to, in the
4 correspondence that was submitted, the very place where she
5 waited — where defense counsel made it clear that they were
6 not willing to turn everything over, and she has told you
7 today, although a bit varied in the midst of discussing other
8 things, that that's still their position. And Exhibit A for
9 this is the iPhone, or an iPhone. No iPhone has been disclosed
10 by Mr. Shipman as a device for our review. We specifically
11 asked about an iPhone, and the response was essentially no, and
12 that's in the section of the email that I read to you earlier:
13 "You asked whether he has any phones in the house; I informed
14 you he does but that none of them have StoneX's proprietary,
15 confidential, and trade secret information on them." That's
16 precisely the concern that we have. Those kind of assessments
17 were being made by the defendant and his counsel.

18 And as far as this speculation by counsel in this call
19 as to what an iPhone contains and doesn't contain and it's
20 irrelevant and would be redundant, I just need to go back to
21 the voluntary stipulation by Howard Shipman proposed to be
22 entered as a court order, that was entered as a court order on
23 January 26, 2023. In paragraph 4, the key phrase is: "the
24 SanDisk drive, Sony drive, Linode cloud computer, or any other
25 computer, device, or account in my possession or control." And

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1 an iPhone is plainly a device. A blender is not. You know,
2 like, this is a little ridiculous. But I think it's clear that
3 there are devices that are in play that are not blenders, but
4 they're iPhones, and there may be other things that the
5 defendant has — has been very cagey about whether he was
6 disclosing them to us, whether he was going to permit them to
7 be reviewed. An iPhone may well take a completely different
8 device to copy than a computer. I'm not an expert on this, but
9 that's what we were trying to accomplish, to know in advance
10 what our consultants were going to be coming to review. And we
11 filed this letter on February 7th. It wasn't until today, at
12 11:30, that you received this affidavit saying, I don't know
13 why they said this, you know, we're ready to give them
14 everything, although, again, she told you in this call, your
15 Honor, that she's not prepared to give us the iPhone or iPhones
16 or anything like that. So, I mean, we're a little skeptical of
17 the timing here. I mean, if we really had it all wrong and if
18 that's the issue here, that could have been cleared up pretty
19 easily before now.

20 As far as — I think the iPhone is clear enough.

21 With respect to the Linode cloud computing device,
22 again, this was a stipulation submitted by defendant to the
23 Court to try to put off any litigation of a TRO. And the Court
24 so ordered it. And that paragraph refers specifically to the
25 Linode cloud computer. And the defendant's position now is,

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1 well, you wrote those words — you, the plaintiff, wrote those
2 words, we just copied them into this stipulation, you can't
3 hold us to them. Well, I don't think that — I mean, things
4 were deleted from the TRO that we had proposed. This is not
5 exactly the TRO we had proposed. They revised it. But they
6 left in Linode cloud computer. Now we're told, you can't come
7 on site and access the Linode cloud computer using my sign-on,
8 login ID and so forth, because I decommissioned it. And we're
9 further told, that ID, I decommissioned it, but I didn't think
10 to take it out of this document I signed on January 26, 2023,
11 but I decommissioned it, and you can rely on the subpoena that
12 you've issued to Linode. Well, we don't know that we would get
13 the same information from Linode that we would get through the
14 direct access to the account. It may well be that Linode has
15 logs of information but doesn't have the actual underlying
16 information that he would have access to. We don't know that.
17 And there's been nothing — the defendant has not come forward
18 and said, you will lose nothing by ignoring the portion of the
19 January 26, 2023, order referring to a Linode cloud computer if
20 you simply go via subpoena to Linode and seek the information
21 they have. There's been no showing of that, and that's what
22 the order required. And we think that the judge — there's no
23 reason for the Court to reconsider what is already stated on
24 that point.

25 MS. PETERS-HAMLIN: Your Honor, I might help resolve

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1 things here. We have absolutely no problem — and we've never
2 said what he's claiming now. We have no problem giving them
3 the password to — that he had to Linode and giving them access
4 to his account. There has never been any issue of us revealing
5 right from the beginning that he had a Linode cloud computer.
6 He was asked. It was approved by his manager. Linode was
7 something that was also used by Evan Pfeuffer. He disclosed
8 that. They can have passwords to the account; they can look at
9 the account. He decommissioned the server so we've identified
10 that the proper way to getting any information off that server
11 is from Linode. We haven't in any way opposed them getting
12 that information from Linode. Absolutely they can have the
13 password to the Linode account. Nobody is denying them that.

14 MR. CHIN: But your Honor has — you've already
15 ordered — we don't know what meaning that password will have
16 or what access they will gain to us without the reactivation
17 occurring, and as you ordered on February 10, the defendant is
18 to promptly reactivate his Linode server, and we —

19 THE COURT: Here. I'll resolve it. I'll resolve it.
20 The defendant has no objection to producing the Linode cloud
21 computer, giving the password to the Linode. The plaintiff
22 doesn't want to reactivate the account because it costs \$120,
23 and the reactivation of the account is not specifically
24 provided for in paragraph 4. But if the defendant wants the
25 account reactivated, the defendant can pay \$120 to reactivate

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1 the account.

2 MS. PETERS-HAMLIN: I think you mean the plaintiff,
3 your Honor.

4 THE COURT: Yes. I mean the plaintiff. So the
5 plaintiff can pay \$120 to reactivate the account.

6 Also, I am not sufficiently technologically adept to
7 know whether it really makes a difference whether the account
8 is reactivated, so it would appear to me that Linode should
9 have the information and should not be destroying information
10 from the time that it got the subpoena. Now from my
11 nontechnologically sophisticated standpoint, it would be
12 remarkable if Linode did not freeze whatever information it had
13 at the time that it got the subpoena.

14 So the parties on both sides have developed a
15 relationship that normally gets worked out but in this case
16 hasn't. The whole issue of devices could be easily worked out
17 by simply defining devices in such a way as devices which can
18 receive or communicate information of some sort. But --

19 MR. CHIN: Your Honor, we attempted to do that. I'm
20 sorry. I don't mean to interrupt. But if you look at --

21 THE COURT: Hold on. Hold on.

22 MR. CHIN: All right.

23 THE COURT: Okay. But then there could be a response
24 that, gee whiz, you know, if blenders can operate remotely,
25 that's getting or giving information to the blender. Sure.

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1 You both can engage in that sort of stuff. Okay. I mean,
2 plaintiff says, we tried to do that, the defendant says, no,
3 you didn't. Okay.

4 The Linode issue, I've worked out for you; and could
5 have been worked out among yourselves. So I modified the final
6 paragraph of my February 10 order to say that the plaintiff
7 will provide any necessary cost to reactivate the Linode
8 server. That resolves the Linode issue. With respect to
9 the —

10 MR. CHIN: Your Honor, just —

11 THE COURT: Go ahead.

12 MR. CHIN: — to be clear, though, an iPhone is not a
13 blender, and I think — I'm not going to re —

14 THE COURT: I was going to get to iPhones.

15 MR. CHIN: Okay. I apologize.

16 MS. PETERS-HAMLIN: Also, they did say iPhone --

17 THE COURT: Stop, stop. Please stop. You're both
18 talking over each other, and the reporter can only get down one
19 person talking, and as a matter of default, the reporter will
20 take down what I'm saying.

21 So with respect to iPhones, it's plain that iPhones
22 are covered as a device. The defendant says, we've identified
23 all iPhones under his possession or control. I don't know if
24 that's accurate, but that I think is the representation.

25 MS. PETERS-HAMLIN: Just so I can answer your Honor

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1 about that. He has not identified his children's iPhones, his
2 wife's iPhone —

3 THE COURT: I was going to get to that. I was going
4 to get to that.

5 MS. PETERS-HAMLIN: Okay. All right. Or their
6 computers.

7 THE COURT: So it's his iPhones. With respect to
8 iPhones of the wife and children, I would not at this point
9 require discovery of the iPhones of the wife or children if the
10 defendant submits an affidavit that he never used the iPhones
11 of his wife or children to get or receive any information,
12 without trying to parse whether the "any information" is work
13 related or not. If his children and wife's iPhones are solely
14 for their personal use and not his, and he swears he respects
15 that, he doesn't use them, over the last two years never has,
16 then I would not require their inspection.

17 MS. PETERS-HAMLIN: Could I get a clarification from
18 the Court on one issue with respect to what your Honor just
19 said, so I understand? So for instance, I have three children
20 with my husband. Sometimes they text my husband and he shows
21 it to me. So I'm getting — I look at their funny texts that
22 they just sent to him. Or Brittany makes, you know, an inquiry
23 about hedge fund, and I look at what he says that she said
24 because we're a family. Sometimes we will show each other some
25 silly text that somebody in the family has just said. That's

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1 not to get information that is remotely related to this. It's
2 an extraordinary, you know — it's not reasonably calculated to
3 lead to admissible evidence to say --

4 THE COURT: Thank you. I know the scope of discovery.

5 MS. PETERS-HAMLIN: I know you do, your Honor, and I
6 have the greatest respect for you, and you're much more IT
7 aware than I am. But I do think that it would be relevant for
8 the order to say that he has not used the phone of his wife or
9 children for any purpose related to StoneX. But to say that he
10 hasn't used it to access information, every time we look at a
11 text on our wife's --

12 THE COURT: Okay, okay. Mr. Chin?

13 MR. CHIN: As to this issue, I mean, I'm not sure how
14 this would be worded, but if the exclusion being requested here
15 is not that there was any communication between Shipman and his
16 children or wife on their phones or any use by Shipman of those
17 phones to communicate but rather — well, if the exclusion
18 would be that merely looking at someone else's phone would not
19 fall into the scope of the Court's order, I don't have any
20 problem with that. That's the first time I'm hearing that
21 argument. But looking at it —

22 THE COURT: Oh, stop. Stop, stop. It would be
23 sufficient at this point that he wouldn't have to produce any
24 phones from his wife or children if he submits an affidavit
25 that he has never gotten or received any information relating

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1 to StoneX on those devices. If he can submit that declaration
2 under oath, then those devices wouldn't be required to be
3 produced or examined, at this point, unless something occurs.

4 MR. SHIPMAN: Your Honor, may I address the Court?
5 This is Howard Shipman.

6 THE COURT: Well, actually, you're being represented
7 by a lawyer at this point.

8 MS. PETERS-HAMLIN: You can email me, Howard, if you
9 want to have something said to the Court.

10 MR. SHIPMAN: My apologies.

11 MR. CHIN: Your Honor, you made a statement about the
12 iPhone situation that I just need to address. And we've
13 provided these papers to the Court; they're attached to our
14 February 7th letter. So the statement that he has disclosed
15 iPhones to us for our inspection, that's not accurate. The
16 claim by defense counsel that that's what occurred is not
17 accurate at all. And if you look at the attachments to our
18 February 7th letter, you'll see the first attachment was the
19 declaration that we proposed, where we offered context for the
20 word "device," which you will see — if you look at it, you'll
21 see was including, without limitation, computers, mobile phones
22 — there's no mention of a blender. And then you will see as
23 the second attachment to our February 7th letter the
24 declaration of Mr. Shipman that was submitted — I don't know
25 — I think it was seven or eight minutes before our last

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1 conference, and if you look at that declaration, there's no
2 iPhone listed in it. So the idea that it --

3 MS. PETERS-HAMLIN: Yes, but your Honor, Exhibit A and
4 B makes very clear that orally I did --

5 MR. CHIN: Please, your Honor, may I --

6 THE COURT: No, no. Stop, stop, stop, stop, stop. I
7 let some interruptions go, but plainly my ease in dealing with
8 counsel has been misplaced. I usually don't allow
9 interruptions. I wait for someone to be finished before
10 calling on someone else.

11 So I'm prepared to take the point that at one point an
12 iPhone or iPhones wasn't disclosed. Okay. Then an iPhone was
13 disclosed, at least one, and then there was a dispute about
14 other iPhones in the house. I'm not prepared to referee an
15 internecine meet-and-confer between the parties to attempt to
16 resolve definitions of terms, and what was or wasn't produced
17 when. I'm just not at this point.

18 So you were going finish something, Mr. Chin.

19 MR. CHIN: Your Honor, the position with respect to
20 iPhones has been consistent on the defense part. It's just not
21 correct that there's ever been a point where the defense has
22 said, there is an iPhone that we're willing to disclose and
23 make available for inspection and here's the model number or
24 whatever, whatever you would need to know to do that. You'll
25 see when you look at the papers that I've already referred to

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1 that are attached to our February 7th letter.

2 And then in the email exchange that defense counsel is
3 so anxious for you to review, that — it's a discussion of the
4 phones subject, where defense counsel injected this "none of
5 them have StoneX's proprietary, confidential, and trade secret
6 information." And so I think the import of the order issued on
7 Friday is now clear that, I mean, any iPhones that are in the
8 possession, custody, or control of Mr. Shipman will have to be
9 disclosed. But I'm just — I'm just saying that they haven't
10 been prior to this call. They haven't been —

11 THE COURT: Okay.

12 MR. CHIN: — and that's just not an accurate
13 statement by defense counsel to you.

14 MS. PETERS-HAMLIN: Your Honor, I'm sorry. Please
15 read Exhibits A and B. I clearly disclose that there's an
16 iPhone. They pointedly did not provide to the Court that
17 correspondence where I very clearly did disclose that there is
18 an iPhone. Because it is redundant of an iPad and there's
19 nothing that can be downloaded onto an iPhone and because it
20 has personal photographs of the family, etc., which would then
21 be in the control of somebody he doesn't even know, we said we
22 do not believe that it's appropriate for you to copy his
23 iPhone. However, we absolutely disclosed, both orally, in the
24 meet-and-confer conference call, as well as in Exhibits A and
25 B, that he does have an iPhone. So he's not — he just

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1 finished saying to you I never disclosed it. That's not true.

2 THE COURT: Okay. His iPhone, or one or more of his
3 iPhones, would be covered by the order. And you can work out
4 the protocol for what's not covered on the iPhone, as I asked
5 you to do. But that would be covered. The other iPhones of
6 the children and the wife are not covered, providing he
7 provides an affidavit or declaration under oath that he didn't
8 use those iPhones to get or receive any information relating to
9 StoneX. I think —

10 MS. PETERS-HAMLIN: That's perfectly fair. And I
11 assume that the same applies to computers, that the children's
12 and wife's computers are not covered, as long as he gives you
13 an affidavit that says he's never used them to get or access
14 any — to get or receive any information regarding StoneX.

15 THE COURT: Yes. Do you want to be heard on that,
16 Mr. Chin?

17 MR. CHIN: Well, your Honor, look, we've been advised
18 that we have a number of children, adult children, I assume
19 minor children. You know, it's our view that possession,
20 custody, and control would extend, you know, in terms of, in
21 physical terms, to the household. The Court has, you know,
22 conceivably held otherwise, assuming certain conditions are
23 met. As we presented in our original filing here — and I
24 don't believe our original filing here has been resolved by the
25 single affidavit submitted by Mr. Shipman — there are a lot of

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1 open questions as to where our data is — our data are. I
2 think the Court observed in our last conference that
3 Mr. Shipman's declaration did not answer a number of those
4 questions. So we do have — we have real concerns about where
5 our data has traveled since these issues began to emerge in
6 early December. But I understand the Court's ruling, and I'm
7 not aware of any basis on which to make an alternative or
8 different ruling with respect to the computers. I guess our
9 view would be if they are in the household as opposed to an
10 adult children's possession outside the household, we think
11 they should be included. I think the Court has ruled against
12 us, at least in part —

13 THE COURT: Right.

14 MR. CHIN: — assuming certain representations can be
15 made, and we accept that.

16 THE COURT: Okay. Fine. You're right that I ruled
17 against you on that. These discovery rulings are always
18 subject to revision if what's uncovered in discovery proves
19 that they should be revised. So on its face, it's reasonable
20 not to inspect the children's and wife's computers or iPhones
21 if the defendant makes the necessary sworn declaration that
22 they were not used to get or receive any information relating
23 to StoneX.

24 I think I've resolved the two open issues with respect
25 to iPhones and the Linode server. So with those amendments to

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1 the February 10 order, I don't think that it's necessary to
2 make any other rulings.

3 Now at this point I remain open to any other
4 applications that are made before me, though I'm on the cusp of
5 referring it to the magistrate judge. But I'll keep the role
6 of referee at the moment.

7 Anything else?

8 MR. CHIN: Well, your Honor, we were just going to
9 address that. I mean, we're open to — I mean, I think
10 whatever the Court's preference is, that we are certainly open
11 to the designation of a magistrate judge for discovery disputes
12 if and when the Court thinks that's appropriate. And --

13 THE COURT: I prefer to keep discovery disputes so
14 that I get a sense of who's being reasonable and who's being
15 unreasonable. These are disputes that should be resolved.
16 When I send it to the magistrate judge, it's all too easy to
17 just rely on the magistrate judge to try and resolve disputes
18 rather than for the parties to resolve them among themselves.
19 For some reason parties think it's easier if they appear
20 unreasonable to the magistrate judge rather than to the
21 district court judge. So I'll keep it, at the moment. I
22 eventually have to decide the substantive issues in the case on
23 the preliminary injunction motion so I'll keep the disputes
24 before me at the moment. But there will come a time, if
25 necessary, that I'll refer it to the magistrate judge.

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1 Anything else for me at the moment?

2 MS. PETERS-HAMLIN: Yes, your Honor. The thing that
3 my client was trying to say during the conference call and then
4 sent to me by email is, he says that he does believe at one
5 point in time he sent to his wife StoneX benefits and health
6 insurance information from his StoneX account so that she could
7 have it for medical purposes for their children. I said that
8 he could just include that in his declaration, that that's
9 something that he has done, but other than that, he would have
10 to say that in his affidavit that he has never used their
11 phones or their computers to get or receive any StoneX
12 information. Obviously sending something to his wife about
13 medical coverage was not within the contemplation of the Court,
14 but he could just address that in his affidavit, and I hope
15 that's correct from your Honor's viewpoint.

16 THE COURT: Yes. Yes. I think that's very
17 forthcoming. And I appreciate it.

18 MS. PETERS-HAMLIN: Okay.

19 THE COURT: Okay.

20 MS. PETERS-HAMLIN: And I will work before I withdraw
21 from the case, your Honor, to include in the protocols that
22 we've already sent to opposing counsel protocols for the
23 iPhone. Given that it's now clear from your Honor that he
24 would like the iPhone — at least part of it, relevant parts,
25 assumably not photographs, but — the iPhone is to be included

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1 in the inspection.

2 And I just want your Honor to know —

3 THE COURT: I said iPhone or iPhones.

4 MS. PETERS-HAMLIN: Pardon?

5 THE COURT: I said iPhone or iPhones. I mean, if he
6 has more than one.

7 MS. PETERS-HAMLIN: Yes. He just has one, your Honor.

8 THE COURT: Okay.

9 MS. PETERS-HAMLIN: So I want your Honor to know that
10 when I was talking about, broadly, what "accounts" means and
11 what "devices" means, it wasn't to be cute or adorable. It was
12 because within a 24-hour turn-around period they wanted him to
13 sign a declaration saying that, and I was asking them to narrow
14 it to the reasonable scope that the Court has just narrowed it
15 to, and I absolutely disclosed to them that he does have an
16 iPhone, he does have an iPad, he does have a Yahoo account. He
17 said they can examine the Yahoo, they can examine the iPad. I
18 did say I thought that the iPhone was outside the scope because
19 the same cloud is available on iPad as on iPhone and there
20 really was no reason for it.

21 The other thing I'd like to just bring to the Court's
22 attention is, they also tried to say that they should have
23 access to all of the things remotely until such time as they
24 believe they no longer have a business need, so that would mean
25 that they could come in and out of his computer at any time;

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1 CRA could. I believe that the examination, the standard
2 examination and what the Court has ordered here is that they
3 come to his home, they do the examination of the iPhone, his
4 iPhone, USB, USBs identified, the computers, the accounts, they
5 do it in his home, and they leave. And I personally would be
6 really spooked if somebody, for however long that they needed,
7 could just remotely access my equipment. That's something else
8 that they've asked for. And I believe that's completely
9 unreasonable. I've never seen any kind of forensic terms like
10 that being ordered by anybody. Hopefully they will back down
11 from that. But our concerns were just the overbreadth that we
12 were seeing from them, including his children's iPhones,
13 including his children's computers. We weren't being adorable,
14 your Honor; we were trying to make sure that this was not
15 beyond the pale and beyond the scope of what was reasonable.

16 So I thank you for taking the time to resolve these
17 matters, your Honor.

18 THE COURT: I thought that the plaintiff was actually
19 proposing to inspect the devices at some location outside the
20 defendant's home so that they wouldn't be an unnecessary
21 presence at the defendant's home.

22 MS. PETERS-HAMLIN: No. He wants it to be done in his
23 home and — because he doesn't, you know — the longer that
24 they take his phone, his computer, you know — he has a study,
25 a separate room where he does his work, where they can do this

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1 examination. The longer, you know — if they travel to some
2 hotel and then come back again, it's just — deprives him
3 longer. He's happy to have them come to his home. I think
4 that's what the stipulation says, very pointedly, that the
5 examination would be done in his home. The issue is they were
6 then trying — in coming up with a protocol and asking him to
7 sign a declaration — and this protocol version that they sent
8 to us said that they would have — that he had to, you know,
9 disclose the router and everybody that's ever accessed it, that
10 they would be able to have, as long as they had a — CRA
11 determined they had a business need, they would be able to have
12 remote access. I mean, it was really over the top. And --

13 THE COURT: Could I stop you, please. I'm not going
14 to resolve the details of the protocols between the parties as
15 to the terms of the CRA examination. If there is a dispute
16 between the parties, you'll have to bring it back to me or the
17 magistrate judge.

18 MS. PETERS-HAMLIN: Okay. Thank you, your Honor.

19 MR. CHIN: I mean, your Honor, I'm not really sure
20 what to do with all of that. I think you indicated that you're
21 not going to take it up right now. I mean, I'll merely say
22 that as the judge, as you pointed out, yes, there was a point
23 at which we suggested for everyone's convenience that we have
24 CRA remove the devices and make the forensic copies at some
25 remote — someplace nearby so as to be less intrusive. But I

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1 think that suggestion was rejected. We didn't move to compel
2 on that. I mean, we recognized the stipulation and order says
3 in his home, and, you know, CRA is prepared to do their — to
4 make their forensic copies, you know, in his home. That was
5 not something that was agreed to. So we haven't sought an
6 order from the Court in that regard, and we're prepared to go
7 forward on that point as the existing order provides.

8 THE COURT: Okay. There was an issue as to perpetual
9 access, if you will. And that was an issue that hadn't been
10 raised before. And I don't know what the positions of the
11 parties are with respect to that. There was plainly a
12 contemplation of the January 26th order which contemplated the
13 forensic copying of information. So I don't know what the
14 parties' discussions were with respect to subsequent remote
15 access to the same devices, as opposed to forensic copying of
16 any relevant information that's found.

17 MR. CHIN: Well, your Honor, I think it's in two
18 pieces, and the piece that — where we've been arguing about
19 before you today and was the subject of our letter last week is
20 really just the accessing and copying piece. In paragraph 4 of
21 the January 26th order, after the forensic examination — so
22 that's — if you read through that paragraph to, "and to
23 forensically examine those computers, devices, or accounts," if
24 you stop there, I think that's what we've really been talking
25 about thus far. Now following that, you have to accomplish the

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1 permanent removal, deletion, and destruction of all copies of
2 StoneX's proprietary, confidential, and/or trade secret
3 information. I mean, that will have to come after CRA has
4 reviewed their forensic copying, right? They'll have to look
5 and see what they find. And, you know, then they will identify
6 or advise that if they found StoneX proprietary information on
7 a certain device, reviewing their copy of it, then we will
8 reengage with the defendant to accomplish the second part of
9 paragraph 4, the deletion or destruction of that information.
10 But we're not there yet. We can't do that until we've created
11 the forensic copy and CRA has run the searches through those
12 forensic copies to see whether that information is present or
13 not. I think that's the only follow-on access that I have in
14 mind. If I'm missing something that the Court is thinking
15 about, I'm happy to address it, but that's the circumstance
16 where there would have to be some further access to
17 Mr. Shipman's devices, accounts, and systems would be if CRA
18 concludes that StoneX's information is present on them.

19 THE COURT: Okay.

20 MS. PETERS-HAMLIN: Yeah, I think this question came
21 up because your Honor asked whether there was anything else.
22 What I raised with your Honor is I received a protocol from
23 Daryl Leon and it says that they would be asking for these
24 other things that I mentioned, you know, access to the router,
25 anybody — any computer ever attached to the router, and remote

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1 access for as long as CRA determines there is a business need.
2 That's what they asked for. And, you know, I assume that
3 Mr. Chin is indicating that he had no idea that his own team
4 sent such a request to my client and insisted on that as a
5 protocol, that they have — for as long as they unilaterally
6 determine there was a business need to have remote access.
7 Obviously, however, in stark contrast, something that we're not
8 talking about at all is, the provision that I wasn't talking
9 about at all when I mentioned the protocols that were most
10 recently suggested, the provision that says after there's been
11 a determination and copying, if there's a determination that
12 some of it is confidential information, they will be able to
13 destroy that or ask for an order for destruction of that.
14 That's a separate issue. What I'm talking about is the
15 protocol sent, copying Mr. Chin, in which they said that they
16 would have remote access for as long as CRA unilaterally
17 determines there was a business need. We're opposed to that.
18 Your Honor says it's not ripe, that you'll ask us to go back to
19 the drawing board and try to resolve this. If that issue
20 remains an issue, your Honor will address it at that time, and
21 I accept that.

22 THE COURT: Okay. It's not before me.

23 Anything else?

24 MS. PETERS-HAMLIN: No. Thank you, your Honor. I
25 appreciate the time you've taken.

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1 THE COURT: Okay.

2 MR. CHIN: And nothing else for plaintiffs, your
3 Honor. If need be, we'll address these protocol issues that
4 are — that have arisen between the parties separately.

5 THE COURT: Okay. All right. Thank you, all. Great.

6 MS. PETERS-HAMLIN: Thank you.

7 THE COURT: Bye.

8 MR. CHIN: Bye-bye.

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